S.B. CIVIL MISC. APPEAL NO.1718/2006.
Saroj & Ors. Vs. Pappunath & Ors.

Date of Order : 3rd April 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Hemant Kumar for Mr. Rakesh Arora, for the appellants.

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BY THE COURT:

By the impugned award dated 09.06.2006, the Tribunal has awarded compensation in the sum of Rs.90,000/- together with interest @ 7.5% per annum from the date of filing of claim application to the wife and four children of the vehicular accident victim Dev Shanker, taking his age at 90 years. For no other proof on his income except that he was a retired teacher and was earning pension; and his wife admitting getting pension at Rs.2,200/- per month after his demise, the Tribunal has taken the notional income of the deceased at Rs.15,000/- per annum and after deduction of one-third wherefrom and with application of multiplier of 5, has assessed pecuniary loss at Rs.50,000/-; and has allowed Rs.30,000/- towards non-pecuniary loss and Rs.10,000/- towards last rites.

The award is sought to be assailed in this appeal as being low and inadequate. Learned counsel submits that there has been some confusion about the age of deceased but the Tribunal has been in error in taking his age at 90 years as stated in the postmortem report though the claimants asserted his age at about 75-79 years. Learned counsel further submits

that the Tribunal has been in error in taking notional income of the deceased only at Rs.15,000/- per annum and then in deducting one-third therefrom.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the entire record, this Court is satisfied that the present appeal does not merit admission.

A photostat of Pension Payment Order (PPO) of the victim though filed before the Tribunal on behalf of the claimants on 23.05.2006, the very day the wife of deceased was examined in evidence, but was not exhibited. The said photostat of the PPO is available at page C10/32 of the record; and being an undeniable document of the claimants, a relevant fact available therein about the date of birth of the deceased cannot be overlooked. The date of birth of the victim has been distinctly stated in the PPO as 28.02.1926 and, therefore, it is obvious that as on the date of accident, i.e. 10.06.2005, the victim was above 79 years of age. In the face of such position, the statement of the wife of the deceased stating his age at 75 years and so also her own age at 55 years does not inspire confidence. Likewise, the assertion on the age of the children of the deceased in the range of 23 to 11 years becomes difficult to be accepted.

The deceased was a retired teacher of about 79½ years

of age and his wife has admitted receiving pension at Rs.2,200/- per month after his demise though earlier, according to her, the deceased was getting pension at Rs.4,500/- per month. The appellants-claimants asserted that the victim was earning about Rs.5,000/- per month in performing puja and in religious ceremonies but no cogent corroborative evidence is available on record in that relation.

In the overall fact situation of the case, the Tribunal cannot be said to have erred in taking notional income of the deceased at Rs.15,000/- per annum and loss of contribution for the claimants at Rs.10,000/- per annum. Application of multiplier of 5 is also proper. The Tribunal has awarded rather higher amount on general damages and the award ultimately made by the Tribunal in the sum of Rs.90,000/- cannot be said to be lesser than that of just compensation admissible in this case. The rate of interest at 7.5% per annum in the award made in the month of June 2006 can also not be said to be on the lower side. There appears no scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/